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LAW OFFICES
COHN AND MARKS

SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
RICHARD M. SCHMIDT, JR.

JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE
JEROLD L. JACOBS

SUSAN V. SACHS
KEVIN M. GOLDBERG
JOSEPH M. DI SCIPIO

(202) 452-4810

DIRECT DIAL: RBJ@cohnmarks.com
INTERNET ADDRESS:

October 13, 2000


VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Dear Ms. Salas

On behalf of Channel 3 of Corpus Christi, Inc., there are herewith transmitted an original and four copies of its Reply Comments to Supplemental Reply Comments of Sound Leasing, Inc.

Yours very truly


Robert B. Jacobi

RBJ:btc

Enclosures

No. of Copies rec'd 014
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OCT 13 2000

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**Federal Communications Commission**

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations
(Corpus Christi, Texas)MM Docket No. 99-277
RM-9666

To: Chief, Video Services Division, Mass Media Bureau

**REPLY COMMENTS TO SUPPLEMENTAL REPLY COMMENTS
OF SOUND LEASING, INC.**

1. Channel 3 of Corpus Christi, Inc. ("Channel 3") concomitantly herewith is filing an Opposition pleading to the Sound Leasing, Inc. ("Sound") Petition for Leave to File Supplement Reply Comments ("Petition for Leave"). The Sound Petition for Leave asserts as the basis for filing Supplement Comments that factual circumstances have changed since Sound withdrew its initial Comments in November, 1999. The Channel 3 Opposition pleading to the Petition for Leave effectively demonstrates that the factual circumstances have not changed and, therefore, the Petition for Leave should be denied. In the event that the Petition for Leave is granted, Channel 3 hereby respectfully submits its Reply Comments.^{1/}

^{1/} Sound initially filed Comments – which were subsequently dismissed at the request of Sound. The Sound Comments herein proffered are clearly intended to replace the Sound Comments filed in 1999. To that extent, the proffered filing is for Comments, not for Reply Comments. Section 1.415 of the Commission's Rules and Regulations provides for the filing of Comments and Reply Comment.
Continued . . .

2. Paragraphs 4-6 of the Sound "Supplemental Reply" parrot the Sound arguments asserted in its Opposition pleading to the Channel 3 Petition to Deny directed against the Sound Class A license application. Those arguments were the subject of the Channel 3 Reply Pleading to the Sound Opposition pleading – a copy of which is herewith attached as Appendix A.

3. Sound asserts (Supplemental Reply, par. 7) that Channel 3 does not plan to occupy either Channel 47 or Channel 8 at the end of the transition period. The basis for such statement is not identified. However, the Channel 3 Reply pleading (attached as Appendix A) includes a copy of the Channel 3 maximization letter filed with the Commission on December 30, 1999. That letter sets forth several options – the effectuation of such options dependent upon the outcome of the rulemaking proceeding. With respect to a choice between operation on DTV Channel 3 or DTV Channel 8, Channel 3 has not made a decision. Channel 3 is aware, however, of the still unresolved questions pertaining to high levels of atmospheric and man made noise affecting the use of DTV Channels 2 through 6.

4. Paragraph 8 of the Supplement Reply questions the public interest factors underlying the issuance of the Notice of Proposed Rulemaking. The public interest factors were set forth by Channel 3 in its Supplement to Petition for Rulemaking

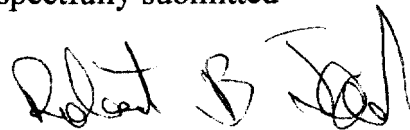
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Should the Commission grant the Sound Petition for Leave, Channel 3 is entitled to file Reply Comments

filed on August 5, 1999. Sound's characterization of those factors is nothing more than self-serving rhetoric.^{2/}

5. Sound filed Comments and withdrew those Comments in 1999. The factual circumstances have not changed in the interim period of time. The issuance of the Notice of Proposed Rulemaking determined that the Channel 3 proposal was consistent with the Commission rules and satisfied the public interest standard. In order to expedite digital television service to a maximum number of people in Corpus Christi, the proposal to substitute DTV Channel 8 for DTV Channel 7 should be granted.

Respectfully submitted



Robert B. Jacobi
Cohn and Marks
1920 N Street, N.W.
Suite 300
Washington, DC 20036
(202) 293-3860

Counsel for Channel 3 of Corpus Christi, Inc.

Date: October 13, 2000

^{2/} The Sound reference to the Comments of the University of Houston System (Supplemental Comments, par. 8) omit the fact that the University stated that it did not oppose the DTV Channel 8 substitution.

APPENDIX A

***COPY OF CHANNEL 3 REPLY PLEADING TO
SOUND OPPOSITION PLEADING***

COPY

BEFORE THE
Federal Communications Commission

In re Application of

SOUND LEASING, INC. (KTOV-LP)
Corpus Christi, Texas

To Convert Low Power Television
Station KTOV-LP to a Class A
Television Station

)
)
)
)
)
)
)

File No. BLTVA-20000905AAE

To: Chief, Mass Media Bureau

REPLY TO SOUND LEASING OPPOSITION TO
PETITION TO DENY

Channel 3 of Corpus Christi, Inc. ("Channel 3"), by and through its counsel, hereby respectfully replies to the "Opposition to Petition to Deny" filed by Sound Leasing, Inc. (hereinafter "Sound"). The Channel 3 Petition to Deny relies upon the Commission's Report and Order In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, released April 4, 2000, 15 F.C.C. Rcd. 6355 (hereinafter "Report and Order"). Paragraphs 61 through 64 (under the heading of "Allotment Adjustments") of the Report and Order are dispositive of the issue. The Sound "Opposition" pleading primarily focuses upon irrelevant matters beyond the scope of the Channel 3 Petition to Deny.

1. Sound argues that since it has met all of the procedural requirements, it is entitled to a license and that since the Channel 3 rulemaking proceeding proposing an allotment change was not granted by the date on which Sound filed its Class A Certification of Eligibility, Channel 3 is not entitled to priority over the Sound Class A application – irrespective of the Channel 3 rulemaking filing date. With respect to the procedural argument, Sound may be entitled to a license – but not for Channel 7.^{1/} Preservation of the service area of an eligible Class A facility continues only if the license application is ultimately granted. See Report and Order at paras. 11, 39 and 40.

2. The Channel 3 Petition for Rulemaking was filed in February, 1999. The Sound argument that it is entitled to priority ignores the Report and Order wherein it construed Section (f)(1)(D) of the CBPA to the contrary. Paragraph 63 of the Report and Order states as follows:

“Section (f)(1)(D) of the CBPA gives full-service stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station’s eligibility for Class A license. . . . This language indicates that maximization encompasses channel

^{1/} The Community Broadcasters Protection Act of 1999 (“CBPA”), codified at 47 U.S.C. ¶ 336(f)(1)(D) provides

“(D) RESOLUTION OF TECHNICAL PROBLEMS – The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station’s allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary –”

The technical problem is that DTV Channel 8 and LPTV Channel 7 may not be able to coexist.

changes as well as site changes and changes to technical parameters.”

Channel changes (i.e., rulemaking proceedings), like applications, filed prior to December 31, 1999 are entitled to priority over an LPTV station’s eligibility for Class A status – even after certification.

3. The Sound argument that the Channel 3 failure to file a maximization application disqualifies Channel 3 from seeking protection against a Class A facility is simply contrary to the Commission’s unequivocal intent expressed in paragraphs 62 through 64 of the Report and Order and to the legislative intent. Whether or not a maximization letter of intent was filed, paragraph 63 of the Report and Order makes clear that the term “maximization” encompasses channel changes and that the filing of a Petition for Rulemaking constitutes the equivalent of a maximization application.^{2/} Indeed, the Letter of Intent to maximize Channel 8 would be relevant only to the extent the proposed maximization (separate and apart from the rulemaking petition) would impact on an LPTV facility.^{3/}

^{2/} Paragraph 50 of the Report and Order also is instructive. The Commission uses the verbiage “At this time, we have not completed any such rulemaking proceeding.” Rather than exclude a timely filed pending rulemaking petition, the import of the language is to make clear that such rulemaking petitioner will be entitled to protection against an eligible Class A license application upon favorable resolution of the rulemaking proceeding.

^{3/} Channel 3 cannot file an application for Channel 8 until the Rulemaking is resolved and an “effective” date specified. Channel 3 filed a Letter of Intent to maximize (including DTV Channel 8) on December 30, 1999, and requests for extensions of DTV filing dates on September 23, 1999 and February 28, 2000. The February 28, 2000 request is pending. See Attachment A.

4. The Commission intent to afford protection to timely filed rulemaking petitions is consistent with the legislative intent. Sections (f)(1)(D) and (f)(1)(7)(A)(ii) reflect the legislative intent to protect digital service areas against all low-power stations including those that may be eligible for a Class A license. The Sound interpretation of the Commission Rule and CBPA would adversely affect all timely filed, but still pending, rulemaking proceedings – in addition to the Channel 3 Petition for Rulemaking – a result that is wholly illogical.

5. Sound is not without recourse. It is entitled to apply for a replacement channel on a first-come, first-served basis (Report and Order, para. 114). With respect to the six-month deadline for filing a Class A application, the Commission stated at paragraph 14 of the Report and Order

“Where potential applicants face circumstances beyond their control that prevent them from filing within six months, we will examine those circumstances on a case-by-case basis to determine their eligibility for filing.”

The circumstances herein may well warrant an extended filing date.^{4/}

6. Channel 3 filed a Petition for Rulemaking in February, 1999. The Report and Order affords timely filed rulemaking proceedings the same protection as timely filed applications.^{5/} The Channel 3 Petition for Rulemaking is not a request for a

^{4/} It should be noted that circumstances beyond the control of Channel 3 have prevented Channel 3 from filing an application for DTV Channel 8.

^{5/} The Sound Opposition raises other matters which are beyond the scope of the Petition to Deny and, therefore, should be disregarded. Channel 3 will address Continued . . .

new DTV allotment (see Report and Order, at para. 50). Accordingly, the Sound license application must be dismissed or returned to a pending status, pending a decision in the DTV Channel 8 rulemaking proceeding.

Respectfully submitted



Robert B. Jacobi
Cohn and Marks
1920 N Street, N.W.
Suite 300
Washington, DC 20036
(202) 293-3860

Counsel for Channel 3 of Corpus Christi, Inc.

Date: October 10, 2000

Continued

these matters in its Opposition to the Sound belated "Supplemental Reply Comments of Sound Leasing, Inc." filed on October 2, 2000. However, with respect to Sound's hypotheses set forth in paragraph 6 of its "Opposition," reference is directed to Appendix A.

ATTACHMENT A

-)TAMP AND RETURN

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LAW OFFICES

COHN AND MARKS RECEIVED

JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE

SUSAN V. SACHS
KEVIN M. GOLDBERG
JOSEPH M. DI SCIPIO

SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1033

SEP 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

(202) 452-4810
DIRECT DIAL
INTERNET ADDRESS RBJ@cohnmarks.com

September 23, 1999

VIA TELECOPIER & HAND DELIVERY

Mr. Clay Pendarvis
Chief, Television Branch
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room 2-A662
Washington, D.C. 20554

In re: Channel 3 of Corpus Christi, Inc. (KIII, Corpus Christi, Texas)

Dear Mr. Pendarvis

Channel 3 of Corpus Christi, Inc. ("Channel 3"), licensee of television station KIII, Corpus Christi, Texas, was allotted DTV Channel 47. Channel 3 filed a Petition for Rulemaking on February 18, 1999 requesting the substitution of DTV Channel 8 for its assigned DTV Channel 47. Pursuant to the Channel 3 request, the Commission issued a Notice of Proposed Rulemaking on September 8, 1999 (copy of first page attached). The NPRM specifies a Comment filing date of November 1, 1999 and a Reply Comment filing date of November 16, 1999. Comments in support of the proposed NPRM will be filed by Channel 3 on or before November 1, 1999.

The Commission has established November 1, 1999 as the date by which the KIII DTV application must be filed. It is obvious that the rulemaking proceeding will not be completed in sufficient time to file a DTV Channel 8 application. With respect to the DTV Channel 47 allotment, it would appear that the filing and processing of an application for such facility would be wasteful of Commission resources and, further, result in the licensee/applicant having to incur an unnecessary expense.

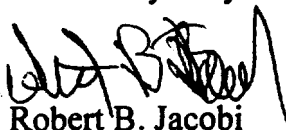
In light of the fact that both the date and the outcome of the rulemaking proceeding is speculative, it is respectfully requested that the date for filing the Channel 3 DTV application be extended by a time period of 60 days from the release date of the Commission Report and Order.

Mr. Clay Pendarvis
September 23, 1999
Page 2

Obviously, ascertaining whether or not an extension of the November 1, 1999 filing date will be granted, is critical. I am therefore requesting expedited consideration of this request.

A "hard copy" of this letter will follow.

Yours very truly

A handwritten signature in black ink, appearing to read "Robert B. Jacobi", with a stylized flourish at the end.

Robert B. Jacobi

RBJ:btc

Enclosure

JOEL H. LEVY
ROBERT B. JACOBI
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LAWRENCE N. COHN
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SUSAN V. SACHS
KEVIN M. GOLDBERG
JOSEPH M. DI SCIPIO

LAW OFFICES
COHN AND MARKS

SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

1204.002-A
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RECEIVED

FEB 28 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: (202) 452-4810
INTERNET ADDRESS: RBJ@cohnmarks.com

February 28, 2000

VIA HAND DELIVERY

Mr. John H. Morgan
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room 2-C864
Washington, D.C. 20554

Dear Mr. Morgan

Channel 3 of Corpus Christi, Inc., licensee of television station KIII, Corpus Christi, Texas, was granted an extension of time to file its digital television application - from November 1, 1999 to May 1, 2002. The extension was based upon the fact that a Notice of Proposed Rulemaking to substitute DTV Channel 8 for the allotted DTV Channel 47 was outstanding.

In the interim period of time, Congress enacted the Community Broadcasters Protection Act of 1999 and the Commission initiated a rulemaking proceeding (Establishment Of A Class A Television Service, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260). Apparently, the processing of the outstanding NPRM to substitute DTV Channel 8 for DTV Channel 47 has been "placed on hold" pending resolution of the outstanding LPTV rulemaking proceeding.

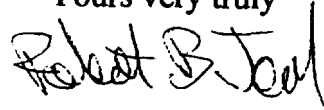
As of the moment, Channel 3 of Corpus Christi is not in a position to know whether it will file a DTV application for Channel 8 or Channel 47.^{1/} Accordingly, it is respectfully requested that the date for filing the DTV application be extended from May 1, 2000 to

^{1/} On December 30, 1999, Channel 3 filed a Letter of Intent to maximize DTV Channels 3 (its analog channel), 8 and 47. Recognizing that the May 1, 2000 date for filing maximization applications cannot be extended, Commission guidance as to which applications are entitled to be processed would be appreciated.

Mr. John H. Morgan
February 28, 2000
Page 2

45 days from the release date of the Report and Order resolving the Channel 3 of Corpus Christi NPRM proceeding.

Yours very truly

A handwritten signature in cursive script, appearing to read "Robert B. Jacobi".

Robert B. Jacobi

RBJ:btc

STAMP AND RETURN

LAW OFFICES
COHN AND MARKS

SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

1204.002 F.
BR
RECEIVED

DEC 30 1999

JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE
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OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DIRECT DIAL: (202) 452-4810
INTERNET ADDRESS: RBJ@cohnmarks.com

December 30, 1999

VIA HAND DELIVERY

Mr. H. John Morgan
Assistant Chief (Engineering)
Video Services Division
Mass Media Bureau
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room 2-C864
Washington, D.C. 20554

Appendix A

Dear Mr. Morgan

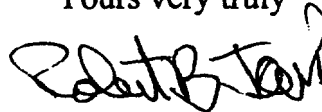
On behalf of Channel 3 of Corpus Christi, Inc., licensee of television station KIII, Corpus Christi, Texas (Channel 3), the Commission is hereby notified of the licensee's intent to maximize DTV facilities as follows:

1. Channel 3 has been allotted DTV Channel 47 as its transitional DTV facility. A Petition for Rulemaking is pending which proposes to substitute DTV Channel 8 for DTV Channel 47
2. If the rulemaking proceeding is granted, the licensee intends to maximize DTV Channel 8;
3. If the rulemaking proceeding is denied, the licensee, in all probability, will return to Channel 3 as its permanent DTV allotment. Consequently, the Commission is hereby notified that the licensee intends to maximize DTV operations on Channel 3;
4. If the rulemaking proceeding is denied, the licensee will undertake an engineering study to determine whether operation on DTV Channel 3 or DTV Channel 47 is preferable. Accordingly, the Commission is hereby

Mr. H. John Morgan
December 30, 1999
Page 2

notified that the licensee intends to maximize operation on DTV Channel 47 should the Channel 8 rulemaking proceeding be denied and the engineering study conclude that DTV Channel 47 is preferable to DTV Channel 3.

Yours very truly

A handwritten signature in black ink, appearing to read "Robert B. Jacobi", with a stylized flourish at the end.

Robert B. Jacobi

RBJ:btc

COMMERCIAL DTV STATIONS
REQUESTING A SECOND EXTENSION OF THE 11/1/99
DTV APPLICATION FILING DEADLINE
(BUILD OUT DATE—MAY 1, 2002)

MAY 25, 2000

(28 CASES TOTAL)

STATE	CITY	CALL SIGN	GRANTED (G) PENDING (P)
AK	LITTLE ROCK	KYPX	P
AK	SITKA	KTNL	P
AZ	LAKE HAVASU	KMCC	P
CA	FRESNO	KJEO	P
CA	REDDING	KRCR	P
FL	COCOA	WTGL	P
FL	PANAMA CITY	WPGX	P
GA	ALBANY	WFXL	P
IA	OTTUMWA	KYOU	P
ID	NAMPA	KTRV	P
LA	BATON ROUGE	WBRZ	P
LA	MONROE	KNOE	P
MO	KANSAS CITY	KMBC	P
MT	GREAT FALLS	KFBB	P
MT	GREAT FALLS	KRTV	P

NE	SCOTTSBLUFF	KDUH	P
NY	ALBANY	WNYT	P
NY	KINGSTON	WRNN	P
OK	OKLAHOMA CITY	KOCO	P
OR	SALEM	KPXG	P
PR	ARECIBO	WMEI	P
SD	LEAD	KHSD	P
SD	RAPID CITY	KOTA	P
SD	SIOUX FALLS	KAUN	P
TX	CORPUS CHRISTI	KIII	P
TX	CORPUS CHRISTI	KRIS	P
VA	NORFOLK	WTKR	P
WY	SHERIDAN	KSGW	P

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 10th day of October, 2000, a copy of the foregoing "Reply to Sound Leasing Opposition to Petition to Deny" was mailed first class, U.S. mail, postage prepaid to Peter Tannenwald, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036-3101.


Brenda Chapman

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 13th day of October, 2000, a copy of the foregoing "Reply Comments to Supplemental Reply Comments of Sound Leasing, Inc." was delivered via hand where indicated or via first class, U.S. mail, postage prepaid to the following:

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101
Counsel for Sound Leasing, Inc.

Todd D. Gray, Esq.
Dow, Lohnes & Albertson, PLLP
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802
Counsel for University of Houston System

Margaret L. Tobey, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006-1888
Alamo Public Telecommunications Council

Pam Blumenthal, Esq. **
Video Services Division
Mass Media Bureau
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room 2A-762
Washington, D.C. 20554


Brenda Chapman

**Via Hand